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SUBJECT: BRAZILIAN SUPREME COURT TO DECIDE KEY CASES THIS SESSION

REF: A. BRASILIA 1076

[B](#). BRASILIA 1144

[C](#). BRASILIA 1670

[D](#). BRASILIA 1834

[1](#). (SBU) Judge Nelson Jobim, who in May rotated into a two-year stint as Chief Justice of the Brazilian Supreme Federal Court (STF), is already putting his stamp on the court's way of doing business (ref A). On July 30, Jobim marked the end of the July recess by doing something no other Chief Justice has ever done: he announced the court's agenda for August. As expected, several key cases are in line for decisions this month, ranging from a ruling on taxing pensioners that could unhinge the administration's pension reform plan to challenges to the recently unveiled Energy Model.

[2](#). (SBU) Jobim's announcement of the court's agenda not only offers transparency and predictability to the press and public, but to the other ten Justices as well. One prerogative of each judge is the right of "review" a case, i.e., to pull it from the docket at any time, including while the other justices are issuing their rulings. These "reviews" may last several weeks or months and generally occur on the most important cases when judges are under particular pressure. Chief Justice Jobim hopes that by announcing the agenda well in advance, he will reduce the number of time-consuming "reviews". Jobim plans to issue weekly updates to the agenda.

[3](#). (SBU) Key cases on the Supreme Federal Court's docket this session:

- ENERGY MODEL. Set to be heard August 4, two constitutional challenges filed by the opposition PSDB and PFL parties to the GoB's Energy Model that was enacted by Presidential Decree in December 2003. That Decree is now pending Congressional ratification. The petitions charge that the new rules for the energy sector violate consumer rights. The Court's discussions have been suspended by a judge's request for a review.

- CLOSING BINGO PARLORS. Scheduled for August 5, a petition filed by the Federal Prosecutor-General challenging states' authority to reopen bingo parlors nationwide. The high court's ruling will decide parallel cases in eleven states. The issue derives from February's "Waldomiro Diniz" scandal, in which an advisor on Lula's staff was caught soliciting bribes from a numbers racketeer. In response, Lula issued a Presidential Decree closing all bingo parlors nationwide, but the Senate rebelled on May 5 and refused to ratify the Decree, so several states allowed the gaming parlors to reopen (ref B).

- CONGRESSIONAL INQUIRIES. A petition filed by the opposition PFL party seeks to open a congressional inquiry (CPI) into the Waldomiro scandal. At the scandal's height, Lula's Workers' Party (PT) and its allies successfully spiked the inquiry by simply not nominating any members, preventing it from forming for lack of quorum. The PFL's petition on the legality of this tactic was set to have been heard last June when the scandal was on the front pages, but one judge requested a "review", so the case is now slated for August.

- TAXING RETIREES. Scheduled for August 18, a decision on whether retirees' pensions can be taxed. If the Court rules against taxing retirees, it could reverse the most important element of Lula's pension reform plan, under which the GoB is expected to garner an estimated R\$ 1 billion (about US\$ 330 million) in annual revenues. This case could also have wide-ranging impact on whether the constitution can be amended in other areas with fiscal consequences. The 11-member Court was in the middle of voting on the case in June when several judges requested a "review", suspending the vote, which was running 3 votes to 1 against Lula's reform.

- AUTHORITIES OF THE PROSECUTOR'S OFFICE. Set for September is a ruling on the investigative authorities of the Public Prosecutor's Office (Ministerio Publico). The Constitution gives the Prosecutor's Office near-total autonomy to pursue

cases but expressly grants investigative authorities only to the police. In the wake of several high-profile, and allegedly politicized, investigations by the Prosecutor's Office, the high court is being asked by a Federal Deputy who is under investigation for corruption to limit prosecutors' investigative authorities. In a similar case last October, Judge Jobim ruled against the prosecutors.

- ABORTION. Set for late September is a full court decision on a high court judge's preliminary ruling on July 1 that would open a narrow exception in the abortion ban to allow women carrying fetuses with anencephaly (not having a brain) to legally obtain abortions (ref C).

- GUN CONTROL. The high court also has pending four challenges to the December 2003 "Disarmament Law" that enacted tough limits on citizens' rights to own and carry firearms (ref D).

COMMENT

14. (SBU) Judge Nelson Jobim appears to be more dedicated to transparency and efficiency than his insular predecessor as Chief Justice, Mauricio Correa, with whom he often clashed. After seven years on the high court and three months as Chief Justice, Jobim is building a reputation as a modern jurist committed to improving both the functioning of the judiciary and the quality of its decisions. The simple act of announcing in advance the court's agenda is emblematic of his style. Jobim also presided over the Supreme Electoral Tribunal that deftly handled the 2002 national elections. A Judicial Reform bill that would enact significant, if not sweeping, changes to the Brazilian judiciary is now in the Senate and set to become law in the coming months, and Jobim has pronounced himself favorable to this bill.

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